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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

FILED
U. S. DISTRICT COURT
MIDDLE DISTRICT OF TENN

APR 10 2007

VINCENT E. ZIRKER, BOP Reg.
No. 16663-075,

Plaintiff,

vs.

METRO NASHVILLE POLICE DEPARTMENT;
OFFICER LOPOLDO LOPEZ; OFFICER
WAYNE FISHER; in their individual
and official capacities,

Defendants.

DEMAND FOR JURY TRIAL
(Rule 38, F.R.Cv.P.)

BY

DEPUTY CLERK

Civil Action No. 3 07 0378

JUDGE CAMPBELL

COMPLAINT - CIVIL RIGHTS VIOLATIONS
(42 U.S.C. §§1983, 1985)

I. INTRODUCTION

1. This is a civil rights action instituted pursuant to 42 U.S.C. §§1983 and 1985 alleging, inter alia, that plaintiff was deprived of his constitutionally secured rights when defendants Lopez and Fisher, in concert with other unknown persons, conspired to maliciously prosecute plaintiff for offenses known to them to be false and fictitious, and, in doing so, did cause false and fictitious evidence to be introduced against the plaintiff. Additionally, defendants offered false and fictitious testimony against the plaintiff for the sole and exclusive purpose of causing him to suffer a malicious prosecution and a deprivation of his liberty.

2. Plaintiff seeks declaratory and injunctive relief and, he seeks monetary damages.

II. JURISDICTION AND VENUE

3. Jurisdiction is conferred on this court pursuant to 28 U.S.C. §1343(a)(1)-(4), and is premised upon claims made pursuant to 42 U.S.C. §§1983 and 1985.

4. Venue is proper in this cause under 28 U.S.C. §1391(b).

III. PARTIES

5. Plaintiff, VINCENT E. ZIRKER, is a citizen of the United States and of the sovereign State of Tennessee. Currently, he is confined at the Federal Correctional Institution at Memphis, Tennessee. At all times pertinent to this complaint, defendant was engaged in legal activities that required the utmost of diligence on the part of the State actors involved therein. All of the acts and/or omissions alleged and complained of herein, occurred within the middle federal district of Tennessee.

6. Defendant, METRO NASHVILLE POLICE DEPARTMENT, is a legal municipal entity under the laws of the State of Tennessee.

7. Defendant, LOPOLDO LOPEZ, is a police officer employed by the Metro Nashville Police Department. At all times pertinent to this action, defendant LOPEZ was acting under color of state law. He is being sued in his individual and official capacities.

8. Defendant, WAYNE FISHER, is a police officer employed by the Metro Nashville Police Department. At all times pertinent to this action, defendant FISHER was acting under color of state law. He is being sued in his individual and official capacities.

IV. EXHAUSTION OF REMEDIES

9. There are no administrative remedies required to be exhausted with respect to the instant action.

V. FACTUAL ALLEGATIONS

10. Beginning on or about November 19, 2003 and extending through December 7, 2005, defendants LOPEZ and FISHER, conspired, confederated, and acting in concert with each other and with others unknown to the plaintiff, did cause false and fictitious criminal charges to be lodged against the plaintiff. To carry out the objects of this conspiracy, defendants, and each of them, wrote reports that detailed false and fictitious drug amounts and that charged plaintiff with possession of a firearm that plaintiff did not possess. In furtherance of the conspiracy, the defendants, and each of them, presented false and fictitious testimony before the United States District Court for the Middle District of Tennessee, case number 3:04-CR-74, and introduced a firearm into evidence in that proceeding that plaintiff never possessed and that was not referenced in any reports or other documentation prepared at the time of the plaintiff's arrest by the defendants. The purpose for introducing said testimony, and in furtherance of the conspiracy, was to secure a federal conviction against the plaintiff for behavior that he did not engage in and was "not guilty" of.

11. At all times pertinent to this complaint, defendants agreed and understood that the purpose of their false and fictitious testimony, the introduction of false and fictitious evidence against the plaintiff, and the preparation of false and fictitious reports accusing plaintiff of certain criminal behavior, was as described in paragraph 10 above and, that their purpose and their methods of achieving this purpose were unlawful and would result in injury to the plaintiff.

12. At all times pertinent to this complaint, defendants acted

and were acting under color of state law.

13. At all times pertinent to this complaint, defendants undertook the acts described herein-above with malice and intent to ~~injure~~ plaintiff, and did so for personal gain, official prestige, and benefit of exerting a power over the plaintiff available to their exercise of the powers vested in them as police officers within the Metro Nashville Police Department.

14. The acts described herein-above were both unlawful and tortious, constituting malicious prosecution and an attempt to deprive plaintiff of his liberty without due process of law.

15. Unless prevented by appropriate injunctive measures, plaintiff believes the defendants will inflict further injury upon him.

VI. LEGAL CLAIMS

16. Defendants acts and/or omissions, alleged herein-above, and both of them, subjected plaintiff to malicious prosecution and an attempt to deprive him of his liberty without due process of law in violation of the Fourteenth Amendment to the Constitution of the United State of America.

17. Defendants acts and/or omissions, alleged herein-above, constitute a conspiracy on the part of the defendants, and each of them, in concert with each other and in concert with others not named in this complaint, to deprive plaintiff of his liberty without due process of law in violation of the 14th Amendment to the Constitution of the United State of America.

18. Defendants acts and/or omissions, alleged herein-above, constitute excesssive exercise of powers granted to defendants in their

capacities as Metro Nashville police officers, in violation of the Fourteenth Amendment to the Constitution of the United States of America.

VII. PRAYER FOR RELIEF

1. Declare defendants to have engaged in a civil conspiracy to cause plaintiff to suffer a deprivation of his liberty without due process of law;

2. Declare defendants to have engaged in a civil conspiracy to cause plaintiff to suffer an unlawful criminal conviction that was the result of false and fictitious testimony and evidence;

3. Declare defendants to have engaged in a civil conspiracy, and/or other unlaw activities, to present false and fictitious testimony and evidence against the plaintiff for the purpose of causing him to suffer an unlaw conviction and to deprive him of his liberty without due process of law;

4. Enjoin defendants from committing any further acts in furtherance of said conspiracy;

5. Award plaintiff punitive damages in the sum of \$12,000,000.00;

6. Award plaintiff compensatory and incidental damages in an amount of not less than \$1,000,000.00, as to each defendant;

7. Award plaintiff costs of this action and any subsequent appeal, together with such other and further relief as this court deems just and proper under the circumstances.

8. Plaintiff also, pursuant to Rule 38 of the Federal Rules of Civil Procedure, demands a trial by jury as to any and all claims triable before a jury.

Dated this 28th day of NOV., 2006.

Respectfully submitted,

Vincent E. Zirker
VINCENT E. ZIRKER
BOP Reg. No. 16663-075
Unit - Delta A
Federal Correctional Institution
P.O. Box 34550
Memphis, Tennessee 38184-0550

Plaintiff Pro Se Sui Juris

Declaration

I, Vincent E. Zirker, being duly sworn on oath and according to law, depose and say that the foregoing complaint is true and correct as I verily believe same to be.

Execured under 28 U.S.C. §1746, this 28th day of NOV.,
2006.

Vincent E. Zirker
VINCENT E. ZIRKER

Dated this 5TH day of MARCH, 2006.

Respectfully submitted,

Vincent E. Zirker
VINCENT E. ZIRKER
BOP Reg. No. 16663-075
Unit - Delta A
Federal Correctional Institution
P.O. Box 34550
Memphis, Tennessee 38184-0550

Plaintiff Pro Se Sui Juris

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